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MINISTRY OF LAW

(Legislative Department)

[New Delhi, the 7th May, 1971.]

THE MAINTENANCE OF INTERNAL SECURITY

ORDINANCE, 1971

No. 5 OF 1971

Promulgated by the President in the Twenty-second Year of the Republic of India.

An Ordinance to provide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Maintenance of Internal Security Ordinance, 1971. Short title,

(2) It extends to the whole of India except the State of Jammu and Kashmir. extent.

and
commencement.

(3) It shall come into force at once.

Definitions. 2. In this Ordinance, unless the context otherwise requires,—

(a) “appropriate Government” means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) “detention order” means an order made under section 3;

(c) “foreigner” has the same meaning as in the Foreigners Act, 1946;

31 of 1946.

(d) “State Government”, in relation to a Union territory, means the administrator thereof.

Power to make orders detaining certain persons.

3. (1) The Central Government or the State Government may,—

(a) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to—

(i) the defence of India, the relations of India with foreign powers, or the security of India, or

(ii) the security of the State or the maintenance of public order, or

(iii) the maintenance of supplies and services essential to the community, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) Any of the following officers, namely:—

(a) district magistrates,

(b) additional district magistrates specially empowered in this behalf by the State Government,

(c) the Commissioner of Police for Bombay, Calcutta, Madras or Hyderabad,

may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (a) of sub-section (1), exercise the power conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on

which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "twenty-two days" shall be substituted.

(4) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order.

4. A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1898.

Execution of detention orders.

5. Every person in respect of whom a detention order has been made shall be liable—

Power to regulate place and conditions of detention.

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

6. No detention order shall be invalid or inoperative merely by reason—

Detention orders not to be invalid or inoperative on certain grounds.

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

7. (1) If the Central Government or the State Government or an officer specified in sub-section (2) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

Powers in relation to absconding persons.

(a) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898,

shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence under clause (b) of sub-section (1) shall 5 of 1898. be cognizable.

Grounds of order of detention to be disclosed to persons affected by the order.

8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Constitution of Advisory Boards.

9. (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Ordinance.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, judges of a High Court, and such persons shall be appointed by the Central Government or the State Government, as the case may be.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory the appointment to the Advisory Board, of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

Reference to Advisory Boards.

10. Save as otherwise expressly provided in this Ordinance, in every case where a detention order has been made under this Ordinance, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.

11. (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.

Proce-
dure of
Advisory
Boards.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. (1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

Action
upon the
report of
Advisory
Board.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

13. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention:

Maximum
period
of deten-
tion.

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

10 of 1897.

14. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified—

Revoca-
tion of
detention
orders.

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

Temporary release of persons detained.

15. (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

Protection of action taken under the Ordinance.

16. No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Ordinance.

Duration of detention in certain cases of foreigners.

17. (1) Notwithstanding anything contained in this Ordinance, any foreigner in respect of whom an order of detention has been made under this Ordinance may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention, in any of the following classes of cases or under any of the following circumstances, namely:—

(a) where such foreigner enters or attempts to enter the territory of India or is found therein with arms, ammunition or explosives, or

(b) where such foreigner enters or attempts to enter a notified area or is found therein in contravention of section 3 of the Criminal Law Amendment Act, 1961, or

(c) where such foreigner enters or attempts to enter the local limits or is found within the local limits of such area adjoining the borders of India as may be specified in an order made under section 139 of the Border Security Force Act, 1968, without a valid travel document, or

(d) where the Central Government has reason to believe that such foreigner commits or is likely to commit any offence under the Official Secrets Act, 1923.

23 of 1961.

47 of 1968.

19 of 1923.

(2) In the case of any foreigner to whom sub-section (1) applies, sections 10 to 13 shall have effect subject to the following modifications, namely:—

- (a) in section 10, for the words "shall, within thirty days", the words "may, at any time prior to but in no case later than three months before the expiration of two years" shall be substituted;
- (b) in section 11,—
 - (i) in sub-section (1), for the words "from the date of detention", the words "from the date on which reference is made to it" shall be substituted;
 - (ii) in sub-section (2), for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;
- (c) in section 12, for the words "for the detention" in both the places where they occur, the words "for the continued detention" shall be substituted;
- (d) in section 13, for the words "twelve months", the words "three years" shall be substituted.

V. V. GIRI,

President.

N. D. P. NAMBOODIRIPAD,

Joint Secy. to the Govt. of India.

